

Flathead County
Planning & Zoning
1035 1st Ave W, Kalispell, MT 59901
Telephone 406.751.8200 Fax 406.751.8210



PETITION FOR ZONING AMENDMENT

Submit this application, all required information, and appropriate fee (see current fee schedule) to the Planning & Zoning office at the address listed above.

FEE ATTACHED \$ 1063.00 + 75.00

APPLICANT/OWNER:

1. Name: David Dunkin / MARY ANN WILSON Phone: 312-876-7190 (FAX)
2. Mail Address: 73 Locust Rd
3. City/State/Zip: Winnetka, IL 60093-3752
4. Interest in property (if map amendment): Owner

Check which applies:



Map Amendment



Text Amendment:

TECHNICAL/PROFESSIONAL PARTICIPANTS:

1. Name: Sands Surveying Inc. Phone: (406) 755-6481
2. Mailing Address: 2 Village Loop
3. City, State, Zip: Kalispell, MT 59901
4. Email: eric@sandssurveying.com

IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE TEXT OF THE ZONING REGULATIONS, PLEASE COMPLETE THE FOLLOWING:

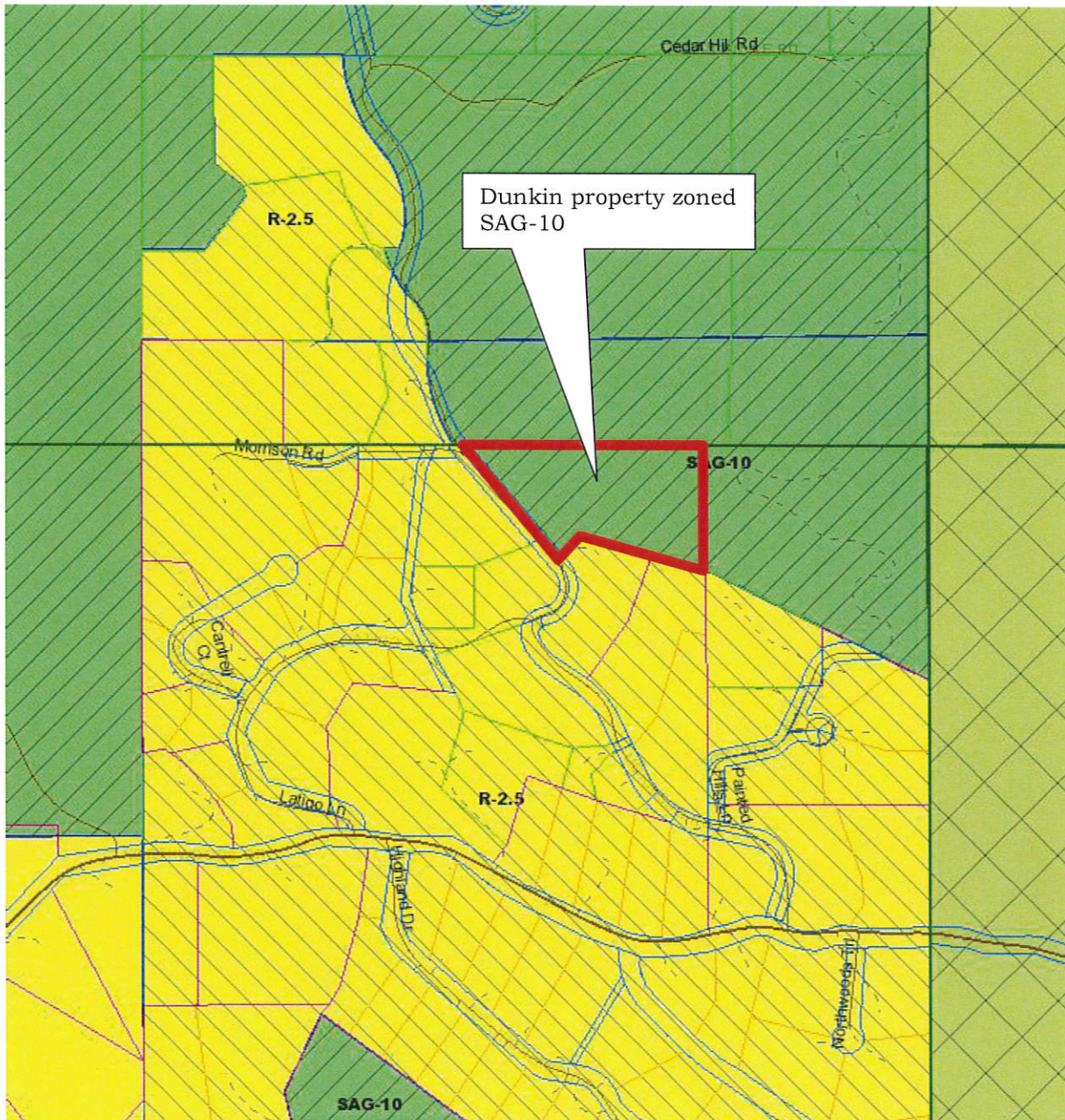
- A. What is the proposed zoning text/map amendment? N/A

IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE ZONING MAP PLEASE COMPLETE THE FOLLOWING:

- A. Address of the property: Morrison Rd, Whitefish
B. Legal Description: Assessor's Tract 4C in the N1/2NE1/4, (Tract A of COS 14704)
(Lot/Block of Subdivision or Tract #)
20 - T31N - R21W
Section Township Range
(Attach sheet for metes and bounds)
C. Total acreage: 5.661 acres.
D. Zoning District: Rural Whitefish Zoning District
E. The present zoning of the above property is: SAG-10 (Suburban Agricultural)
F. The proposed zoning of the above property is: R-2.5 (Rural Residential)
G. State the changed or changing conditions that make the proposed amendment necessary: The applicant owns 5.6 acres and property on west and south

boundary are zoned R-2.5 (Figure 1). The applicant would like to split the property in the future and the proposed zoning would allow that to occur.

Figure 1 (Existing Zoning)



Source – Flathead County GIS – Zoning Layer

THE FOLLOWING ARE THE CRITERIA BY WHICH ZONING AMENDMENTS ARE REVIEWED. PLEASE PROVIDE A RESPONSE AND DETAILED EXPLANATION FOR EACH CRITERION FOR CONSIDERATION BY THE PLANNING STAFF, PLANNING BOARD, AND COMMISSIONERS.

1. Is the proposed amendment in accordance with the Growth Policy/Neighborhood Plan?

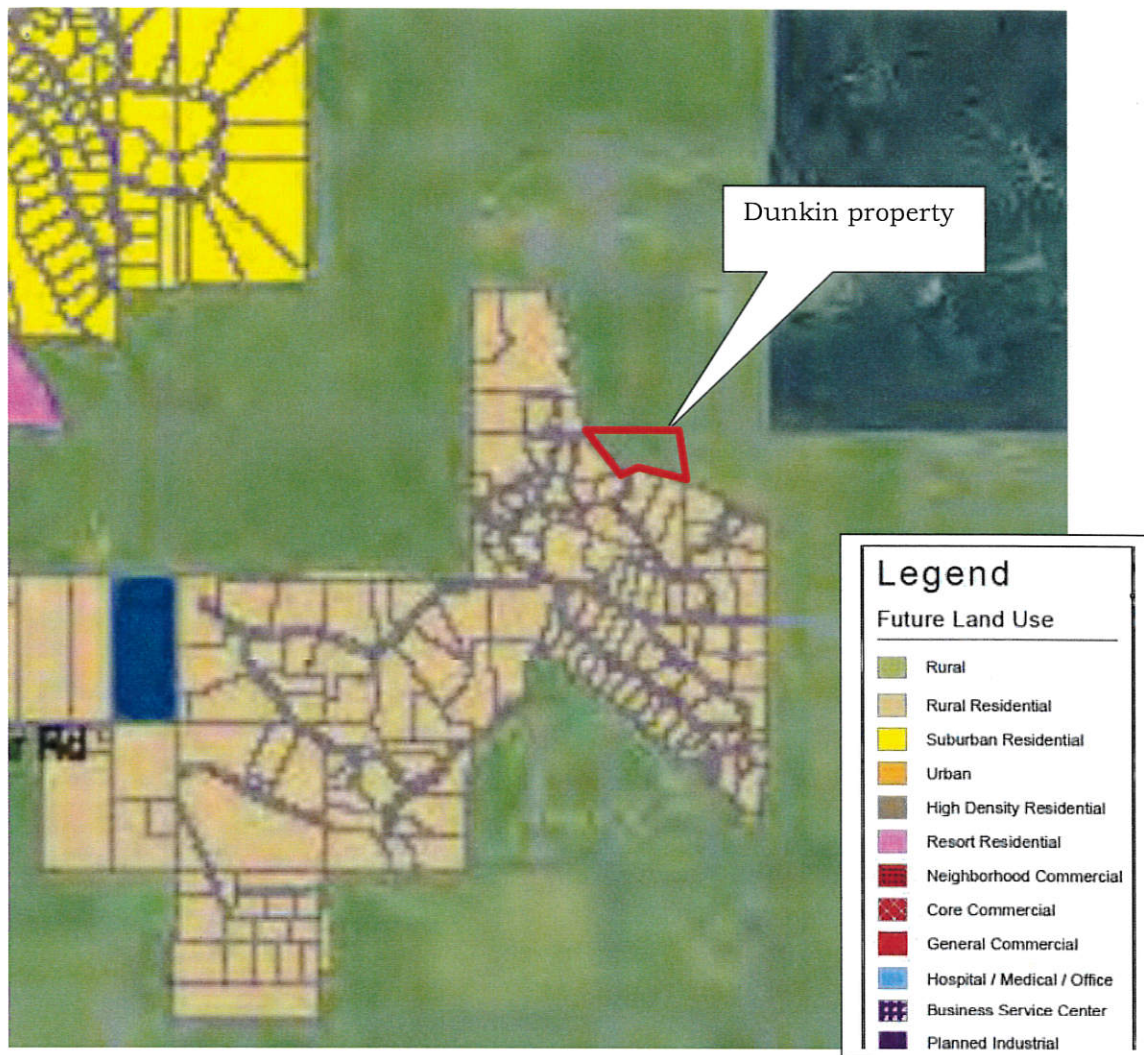
The Dunkin property is located within the boundary of the Whitefish City-County Growth Policy. The Growth Policy Map identifies the property as "Rural" but it is adjacent to "Rural Residential" (Figure 2).

The Growth Policy defines Rural Residential Land Use as: "...intended primarily for areas that are already divided into lots of 2½ or 10 acres in size. Its intent is to preserve rural character while allowing existing large lot residential areas to continue without becoming non-conforming as to minimum lot size. Applicable zoning districts include WCR and WA-10. Rural residential is not seen as a desirable future development option and this Growth Policy does not advocate designating additional areas for rural residential beyond what is already depicted on the Future Land Use Map."

The Growth Policy Defines Rural Land Use as: " Open Lands with decidedly rural character, including farmlands, pasture lands, timber harvesting ad management areas, and forest lands generally fall under this designation. Agricultural and timber management are generally allowed, but residential densities are extremely low. This designation includes "important farmlands" as defined by the NRCS criteria. Zoning is mainly WA-10 and WA-20."

This property was zoned by the City of Whitefish in around 2007 when the City expanded zoning per the old interlocal agreement. As the property is five acres in size at the time it would have made sense to zone this for the 2.5 acre zoning rather than the SAG-10 making it a non-conforming lot. Specifically what the Growth Policy recommends against.

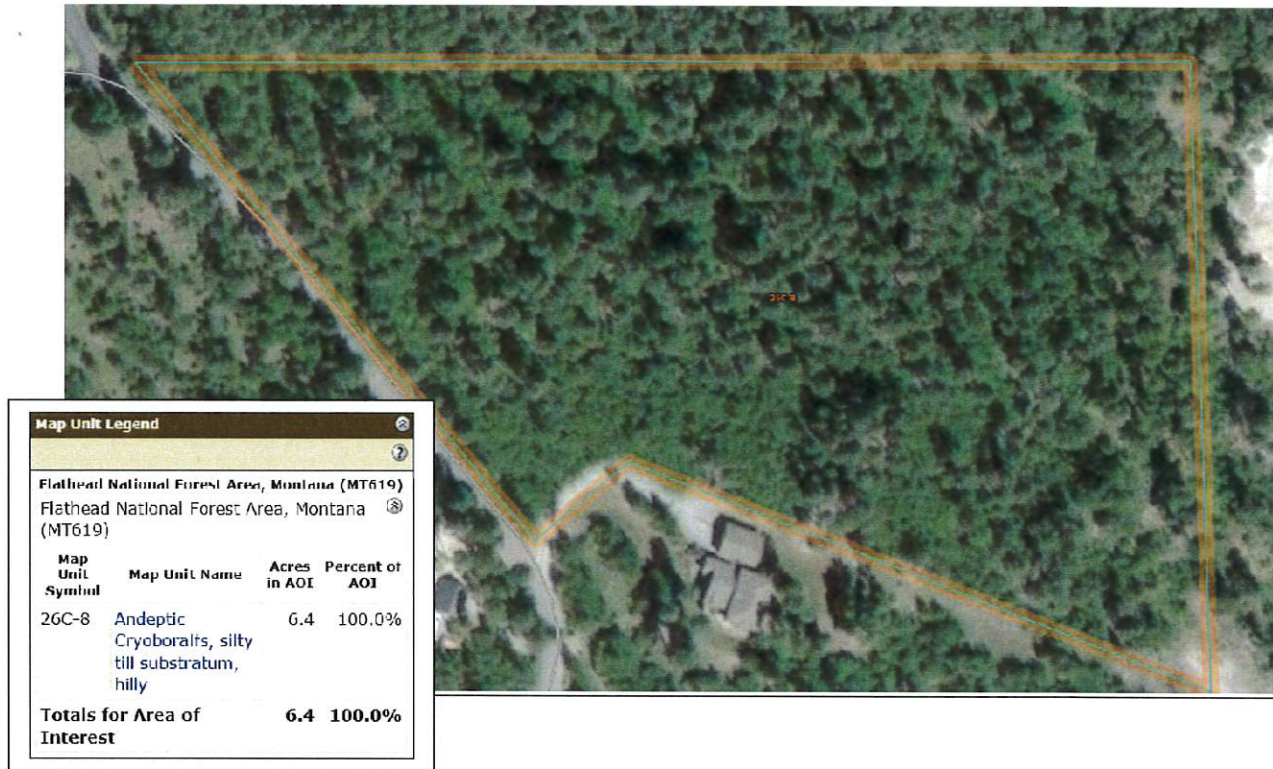
Figure 2



Source: Portion of Whitefish City – County Growth Policy Map

While the 2007 Growth Policy states that “rural” lands are for prime agricultural use or forest management properties, the applicants property is neither. This property is more aligned with the “Rural Residential” definition. The property is located in the Northwoods neighborhood which is a rural residential area with lots ranging in size of 1 to 5 acres. The primary access to the property is off of Reservoir Road to Northwoods Drive to Morrison Road. There is Stoltz Lumber Company land approximately 1/8 mile to the east, the subject property is not corporate timber land. The applicant’s property is not prime agricultural land. Figure 3 shows the soil map from the NRCS Web Soils Survey. Generally these mountainous soils are not considered prime agricultural soils.

Figure 3



Source: GIS Website with Whitefish City Limits (Pink Shading) and Photo

2. Is the proposed amendment designed to:

- a. Secure safety from fire and other dangers? The Dunkin Trust property is within the Whitefish Fire Service Area which is in an interlocal contract with the Whitefish Fire Department for service. The Whitefish Fire Department has its main Station on Baker Avenue in Whitefish. The slight increase in density, just one additional lot, will have minimal impact on fire protection. The property is located within the Wildland Urban Interface and should be thinned for fuels management and wildfire protection. The property is mountainous but it also has numerous areas that could be home sites. The property also has good access to Morrison Road, located along the western property line, and which is a privately owned and maintained road.

Figure 4



- b. Promote public health, public safety and the general welfare? The property has direct access to Morrison Road, a privately maintained road. The Flathead County Sheriff's Office provides police protection and the Whitefish Fire Department provides fire and ambulance service to the existing residence.

The proposed R-2.5 zoning classification provides the same setback and height standards as the existing SAG-10 zone and very similar but slightly more restricted land use categories. The proposed zoning designations will continue to promote the health, safety and general welfare of the public.

The proposed zone change will only allow the applicant to split the property one time and into a density that mimics many of his neighbors parcel sizes.

- c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements? The property has access to a paved private road within a 60-foot easement. Any future residence would be required to secure sewer and water approval from the Flathead City-County Health Department and possibly MDEQ.

The property is within the Whitefish School District for K-12th grades. In general, larger lots, like those proposed, require less park land than urban densities with small yard areas.

3. Does the proposed amendment consider:

- a. The reasonable provision of adequate light and air? The proposed R-2.5 zoning designation has similar lot coverage and identical setbacks to the SAG-10 zoning. As shown in Figure 1, the applicant's property is bordered by R-2.5 on its west and south sides. The proposed zoning, which matches much of the adjacent zoning, gives reasonable provisions for light and air.
- b. The effect on motorized and non-motorized transportation systems? The subject parcel has direct access to Morrison Road which is a paved privately maintained road within a 60-foot easement. The property is in close to the Whitefish Legacy Trail.
- c. Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities? The Whitefish City-County Growth Policy designates the Northwoods neighborhood with rural and Rural Residential land use designations. The City of Whitefish does not promote an urban density in this area and the proposed R-2.5 is not an urban density. Prior to the City of Whitefish zoning this property in about 2007, the subject property was not zoned. .
- d. The character of the district and its peculiar suitability for particular uses? The subject parcel is located in a rural residential neighborhood. The zoning to the west and south is the same zoning as that requested by the applicant.

Considering the provisions of Spot Zoning and the "Three Part Test" as provided by legal precedent in Little vs. Board of County Commissioners. Spot Zoning is determined by the Court to be an illegal action if the request is found to meet **all** three of the tests. The three tests are as follows:

- i. *The zoning allows a use that differs significantly from the prevailing use in the area.*

The proposed R-2.5 zoning classification is the same zoning that is on more than 80 properties in the Northwoods neighborhood of which the applicant's property is located. Even the SAG-10 zoning classification allows nearly the same land use categories as the proposed R-2.5

- ii. *The zoning applies to a small area or benefits a small number of separate landowners.*

The proposed zone change encompasses just over five acres of land but the adjacent R-2.5 lands encompass approximately 166 acres.

- iii. *The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and this is in the nature of special legislation.*

The proposed zone change is for a single landowner. However the requested zoning is the same designation that is applied to 166 adjacent acres and more than 80 properties. As the proposed zoning matches much of the neighboring zoning this cannot be considered special legislation for the exclusive benefit of the applicant.

As presented the proposed zone change application does not meet the three tests for "spot zoning" and therefore should be considered a legal request.

- e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area? The permitted and conditionally permitted uses of the proposed zoning designation of R-2.5

are very similar to that of the existing SAG-10 zoning classification.
Much of the adjacent lands are currently zoned R-2.5. .

4. Is the proposed amendment, as nearly as possible, compatible with the zoning ordinances of nearby municipalities?

The City limits of Whitefish is more than a half mile from the subject parcel.
The R-2.5 is nearly identical to the City's WCR zoning classification and WCR is
the closest City zoning designation. The proposed zoning should be considered
compatible.

The signing of this application signifies approval for the Flathead County Planning & Zoning staff to be present on the property for routine monitoring and inspection during approval process.

 11/5/20
Owner/Applicant Signature(s) Date

APPLICATION PROCESS

APPLICABLE TO ALL ZONING APPLICATIONS:

A. Pre-Application Meeting:

A pre-application meeting is highly recommended. This can be scheduled at no cost by contacting the Planning & Zoning office. Among topics to be discussed are: Master Plan compatibility with the application, compatibility of proposed zone change with surrounding zoning classifications, and the application procedure.

B. Completed application.

C. Application fee.

D. The application must be accepted as complete by the Flathead County Planning & Zoning staff prior to the date of the planning board meeting at which it will be heard in order that requirements of state statutes and the zoning regulations may be fulfilled.

APPLICABLE TO APPLICATIONS FOR ZONE CHANGE:

A. Application Contents:

1. Completed Zone Change application, including signatures of all property owners applying for zoning map amendment.

IF this is a **MAP** amendment the following are also required:

- i) A map showing the location and boundaries of the property (*vicinity map*).
- ii) A Title Report of the subject property
- iii) **Certified** Adjoining Property Owners List must be submitted with the application (*see forms below*). The list will be sent directly to the Planning & Zoning office, unless you request otherwise. This list is valid for a period of 6 months from date generated. You may also get a certified adjoining landowners list from a title company if you choose.